

## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

\* \* \*

DON'TAE SMITH,

Case No. 3:22-cv-00446-MMD-CLB

Plaintiff,

ORDER

v.

LARRY WILLIAMSON, *et al.*,

Defendants.

*Pro se* Plaintiff Don'tae Smith submitted a complaint for violation of his civil rights under 42 U.S.C. § 1983. (ECF No. 4.) Before the Court is the Report and Recommendation ("R&R") of United States Magistrate Judge Carla L. Baldwin, recommending the Court dismiss all remaining defendants and order the Clerk of Court to close the case. (ECF No. 37.) Objections to the R&R were due September 12, 2023. (*Id.*) To date, Smith has not objected to the R&R. For this reason, and as explained below, the Court adopts the R&R in full and will dismiss this case.

Because there was no objection, the Court need not conduct *de novo* review, and is satisfied that Judge Baldwin did not clearly err. See *United States v. Reyna-Tapia*, 328 F.3d 1114, 1116 (9th Cir. 2003) ("De novo review of the magistrate judges' findings and recommendations is required if, but *only* if, one or both parties file objections to the findings and recommendations.") (emphasis in original).

Judge Baldwin correctly found that Plaintiff's claims are barred by the statute of limitations as to all defendants. See *Perez v. Seevers*, 869 F.2d 425, 426 (9th Cir. 1989); *Rosales-Martinez v. Palmer*, 753 F.3d 890, 895 (9th Cir. 2014). On July 25, 2023, the Court adopted in full Judge Baldwin's Report and Recommendation (ECF No. 34) recommending that Defendant Williamson's motion to dismiss (ECF No. 28) be granted because Plaintiff's Complaint was filed more than one year after the statute of limitations

1 period expired, Plaintiff failed to show that the period was tolled, and there was no blanket  
2 COVID-19 policy that excused *pro se* litigants from filing lawsuits in 2020 and 2021. (ECF  
3 No. 35.) Although the motion to dismiss was filed by a single defendant, the statute of  
4 limitations period applies to all defendants. *See Supermail Cargo, Inc. v. United States*,  
5 68 F.3d 1204, 1206-07 (9th Cir. 1995) (“[A] complaint cannot be dismissed unless it  
6 appears beyond doubt that the plaintiff can prove no set of facts that would establish the  
7 timeliness of the claim.”). Accordingly, Judge Baldwin ordered Plaintiff to show cause as  
8 to why the case should not be dismissed for failure to file within the statute of limitations.  
9 (ECF No. 36). Judge Baldwin explicitly warned Plaintiff that failure to respond would result  
10 in a recommendation to dismiss the case. (*Id.*) Plaintiff did not respond. The Court  
11 therefore adopts Judge Baldwin’s R&R in full and dismisses all remaining defendants  
12 from this case.

13 It is therefore ordered that Judge Baldwin’s Report and Recommendation (ECF  
14 No. 37) is accepted and adopted in full.

15 It is further ordered that all remaining defendants are dismissed from this case.

16 The Clerk of Court is directed to enter judgment accordingly and close this case.

17 DATED THIS 27<sup>th</sup> Day of September 2023.

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MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE